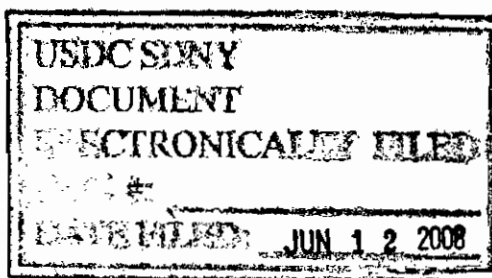


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June 6, 2008

VIA FAX

The Honorable Laura T. Swain
United States District Judge
United States District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 755
New York, New York 10007

ORIGINAL ENDORSED

Re: *Liberty Mutual Insurance Co. v. Fairway Group Holdings Corp. and FW Operating Corp.*
Case No. 07 CV 11415 (LTS)(AJP)

Dear Judge Swain:

We represent defendants Fairway Group Holdings Corp. and FW Operating Corp. (collectively "Fairway") in the above-titled action. We write to inform the Court of recent legislation which affects the underlying lawsuit and thus plaintiff Liberty Mutual's ("Liberty") declaratory judgment claims on its duty to indemnify, and to advise the Court that the parties have agreed to a one month stay.

The present lawsuit is an insurance coverage case commenced by Liberty seeking a declaration regarding its duty to indemnify Fairway in *Kaufman v. Fairway Operating Corp., et al.*, No. 07 Civ. 7525 (BSJ). The *Kaufman* action alleges violations of the Fair and Accurate Transactions Act ("FACTA") amendment to Fair Credit Reporting Act ("FCRA") and seek to certify a class.

On June 3, 2008, the President signed into law H.R. 4008, the "Credit and Debit Card Receipt Clarification Act of 2007," which amends the FCRA to declare that any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and the enactment of this Act, but otherwise complied with FCRA requirements for such receipt, shall not be in willful noncompliance by reason of printing such expiration date on it.

The two plaintiffs in the *Kaufman* action allege that Fairway gave them receipts with printed expiration dates, but not that Fairway improperly failed to truncate the numbers. As

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a consequence of H.R. 4008, neither of the two named plaintiffs in the *Kaufman* Action will be able to claim a willful violation of FACTA. As such, this legislation has the likely effect of causing the *Kaufman* Action to be dismissed. Other plaintiff's counsel in similar cases have already agreed to stipulate to have them dismissed based on H.R. 4008.

While we understand that the plaintiff's counsel in the *Kaufman* Action has not yet agreed to a dismissal, we believe it is likely that the case will be dismissed by stipulation or by motion, if agreement cannot be reached. If the *Kaufman* Action were dismissed, there would be no need for this Court to consider Liberty Mutual's duty to indemnify Fairway. In light of this, Fairway has asked Liberty to agree to a two-month stay to see if the *Kaufman* Action is resolved. Liberty has agreed to a one month stay.

On May 12, 2008, we wrote Your Honor, stating that we would move to stay the indemnity claims in this case by June 2, 2008, based on the fact they were premature, given the *Kaufman* Action remained pending, and asked that the next status conference be adjourned. This Court granted our request, and adjourned the status conference until June 27, 2008. Given the recent legislation, we then agreed with Liberty to extend Fairway's time to move until June 9, 2008, while we waited to see if President signed the bill.

Now that the President has signed the legislation into law, and the parties have agreed to a one month stay, we write to advise the Court of these developments. Subject to the Court's approval, we will provide the Court with an update on the *Kaufman* action within the next 30 days, but will not file a formal motion for a stay at this time.

Very truly yours,

William B. Hayes

*The Court will await the
status report.*

cc: Laura Foggan, Esq. (By Fax)
Dale Hausman, Esq. (By Fax)

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SO ORDERED.

[Signature] 6/11/08
LAUREN TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE